

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN CINDY YOUNKIN**, on February 14, 2001
at 2:30 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Cindy Younkin, Chairman (R)
Rep. Rick Dale, Vice Chairman (R)
Rep. Gail Gutsche, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Rod Bitney (R)
Rep. Dee Brown (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Larry Cyr (D)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Rick Laible (R)
Rep. Jeff Laszloffy (R)
Rep. Douglas Mood (R)
Rep. Bob Story (R)
Rep. Brett Tramelli (D)
Rep. David Wanzenried (D)

Members Excused: None.

Members Absent: None.

Staff Present: Holly Jordan, Committee Secretary
Larry Mitchell, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 334, 2/6/2001; HB 457,
2/12/2001; HB 485, 2/6/2001;
HB 532, 2/12/2001

Executive Action: HB 304; HB 334; HB 332; HB
420; HB 460; HB 310; HB 343;
HB 485

EXECUTIVE ACTION ON HB 304

Motion: REP. CLANCY moved that HB 304 DO PASS.

Motion: REP. CLANCY moved that AMENDMENTS HB030401.alm BE
ADOPTED.

Discussion:

{Tape : 1; Side : A; Approx. Time Counter : 0.1}

Mr. Mitchell passed out the amendments EXHIBIT(nah37a01) and explained them.

REP. CLANCY explained the amendments.

REP. BROWN stated that the amendment on page 1, number 4, is really needed within the bill. She stated that she is in favor of the amendments and the bill.

REP. ERICKSON stated that he does not like the amendments as they still leave the situation to the impossible. There just aren't many scientific studies done on local areas.

REP. CLANCY asked Mr. Mitchell to respond to REP. ERICKSON's comments. Mr. Mitchell stated the amendment is attempting to restrict any changes in local septic system requirements. He gave an example.

REP. DALE asked Mr. Mitchell would it be possible to put language in to say, "peer review studies adapted to local conditions"?

Mr. Mitchell stated yes. REP. DALE stated it is his guess that there are a lot more scientific studies that have been done elsewhere where they have encountered drainage problems and so forth. The number of scientific studies for local conditions in Montana is much less. If we adapted those studies we would still have a large volume of information available but wouldn't require that they be specifically done on local conditions. He asked REP. YOUNKIN if she thought a substitute motion is justified.

REP. YOUNKIN asked REP. DALE to hold that for a separate amendment.

REP. ERICKSON stated that an amendment would work. He is not sure that **REP. DALE's** amendment would work.

REP. STORY stated that he agrees with **REP. ERICKSON** that the language makes the bill impossible. If this is going to work you have to get rid of the peer review scientific study completely and better describe what that comparable information is.

REP. CLANCY stated she would be friendly to an amendment of that sort. She stated that would be separate from the amendments she proposed.

REP. MOOD stated that the bill is attempting to get at a situation where the local controlling agency forced the developer to put a septic system in which was entirely different from what the standard septic system was. The expense then went to \$10,000 from \$2,500 and it did not work. The bill tells the local controlling government that if they are going to change the rules they have to have a reason to change the rules.

REP. BALES stated that he agrees with **REP. MOOD** in that you can have a peer reviewed scientific study that would be comparable to local situations. The peer review thing does not say that it has to be in that community. It is a peer review study of conditions such as soil type, permeability in soils, climate, etc. The amendment sets specific guidelines and parameters.

REP. GUTSCHE stated, it does say on line 29, "relating directly to the conditions." If you are looking at some peer review study it can't be some other conditions, it has to be those exact conditions and that is going to be extremely difficult to find.

REP. YOUNKIN stated, amendment number 6 inserts "specific local" before conditions so we are talking about studies related directly to the specific local conditions.

Vote: Motion that **AMENDMENT HB0304701.alm BE ADOPTED** carried 12-8 with **Eggers, Erickson, Gutsche, Harris, Hurdle, Story, Tramelli, and Wanzenried** voting no.

{Tape : 1; Side : A; Approx. Time Counter : 18.6}

Motion: **REP. CLANCY** moved that **HB 304 DO PASS AS AMENDED.**

Discussion:

REP. YOUNKIN proposed an amendment on line 28 that the word "and" be changed to "or".

Motion: REP. YOUNKIN moved that **AMENDMENT AS STATED ABOVE BE ADOPTED.**

Discussion:

REP. STORY stated, you need to make the same amendment to the amendments that were just adopted.

Motion: REP. YOUNKIN made a substitute motion that **SUBSTITUTE AMENDMENT TO ADD LANGUAGE TO AMENDMENT NUMBER 4 BE ADOPTED.**

Discussion:

REP. ERICKSON stated he likes that amendment. Regarding peer review, there are a number of studies that would not have been called peer review. They can be very useful for this sort of thing. Once the study is determined to be only peer review then the study is limited from the total amount of information that may be useful in making decisions.

REP. YOUNKIN asked REP. ERICKSON, could that other information be considered under a comparable information? REP. ERICKSON stated, it might be able to be used under the comparable.

REP. BROWN asked, perhaps it could say, "or other review" instead of "peer review".

REP. ERICKSON stated that he is satisfied to go forth with the "or" instead of the "and".

REP. LAIBLE asked REP. ERICKSON, what would happen if it said "industry" instead of "peer". REP. ERICKSON stated that he would not trust those studies.

REP. MOOD read the sentence with the amendment. The amendment opens it up to virtually any study. This language works and it works well.

REP. CLANCY asked by changing the word "and" to "or" does it need to say, "as demonstrated by comparable information relating directly to the specific local conditions or peer review scientific studies relating to the specific local conditions"?

Mr. Mitchell explained what that language would do.

Motion/Vote: REP. CLANCY moved that an **SUBSTITUTE AMENDMENT TO INCLUDE THAT LANGUAGE AND ALSO CHANGE "AND" TO "OR" BE ADOPTED.**
Motion carried unanimously.

Motion: REP. CLANCY moved that HB 304 DO PASS AS AMENDED(2) .

Discussion:

REP. HARRIS asked Mr. Mitchell if the proper word is "applicable" instead of "comparable" on line 25. Mr. Mitchell stated yes.

Motion/Vote: REP. HARRIS moved that an AMENDMENT TO STRIKE "COMPARABLE" AND ADD "APPLICABLE" IN ALL PLACES BE ADOPTED. Motion carried unanimously.

Motion: REP. CLANCY moved that HB 304 DO PASS AS AMENDED(3) .

Discussion:

REP. ERICKSON talked about the testimony from the opponents of the bill. He stated that he will not vote for the bill.

REP. BROWN stated that local control should not be more stringent than state rule. She supports the bill.

REP. HARRIS stated that the amendments improve the bill but not sufficiently. The bill does erode local control.

REP. MOOD stated it does not erode local control at all. It gives a tool so they can change the rules but they can't change the rules arbitrarily.

REP. BALES stated this gives the local communities more flexibility and if there is an area with special problems it allows local zoning to do special things that are applicable to that particular area. It does not erode local control in any way.

REP. GUTSCHE stated that it still says local regulations no more stringent than state rules or guidelines. There are occasions when you want your local regulation to be able to adapt to the area.

REP. HURDLE stated the amendments didn't fix the three months problem.

REP. CLANCY stated that she did decide to leave the three month language. It only applies to those regulations of the governing body that were adopted between January 1, 1990 - April 14, 1995.

Vote: Motion that HB 304 DO PASS AS AMENDED carried 11-9 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Story, Tramelli, and Wanzenried voting no.

HEARING ON HB 485

Sponsor: REP. MONICA LINDEEN, HD 7, Huntley

Proponents: Joan Stahl, Rosebud County Commissioner
Jim Mockler, Montana Coal Council
John Williams, Colstrip Mayor
Pam Clark, Big Horn County
John Pretty On Top, Chairman - Big Horn County
Commission
Gloria Paladichuk, Richland Economic Development
William Duffield, MAOGC
Chad Fenner, Big Horn County
Tom Daubert, Montana Association of Oil, Gas and Coal

Opponents: None.

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 34.2}

REP. MONICA LINDEEN, HD 7, Huntley, stated HB 485 is the result of an interim council which was created by the 1999 legislature. She talked about the council. She passed out the Final Report from that council **EXHIBIT (nah37a02)**. HB 485 dedicates 3%, approximately \$425,000, of spendable coal severance tax, per year, to the Coal Board for impact issues. This bill does not replace HB 2's regular Coal Board appropriations and it does not duplicate HB 2's regular program either. **Newell Anderson, Montana Coal Board**, is available for any questions.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 38.4}

Joan Stahl, Rosebud County Commissioner, stated, a major part of the work that the council did goes right along with the legislative agenda on economic development. It is very important to seek ways for the coal companies to be more competitive in the market place while at the same time educating the people of Montana the benefits of coal development to the whole state. There is still mining going on in Rosebud County and there are still great impacts. We need to continue to fund the Coal Board

and do what the law allows them to do. She urged support of HB 485.

Jim Mockler, Montana Coal Council, stated that the coal industry is not declining but the number of employees is. He asked for a do pass.

John Williams, Colstrip Mayor, stated Colstrip has been very instrumental in the generation and coal development throughout the state. It has seen positive and negative impacts associated with impacts. Now there is a situation of decline and Colstrip needs to look towards the future for the community. He urged a do pass.

Pam Clark, Big Horn County, stated that coal production is not declining but the employees are. There is an infrastructure that was built for a lot more people than there are right now. We need economic development but we also need time to find it. Education and infrastructure are big keys. She asked for a do pass.

John Pretty On Top, Chairman - Big Horn County Commissioner, stated coal has brought a lot to the state of Montana. Big Horn is not as rich as people think it is. A system needs to be worked out to make this thing work. He urged a do pass.

Gloria Paladichuk, Richland Economic Development, urged a do pass.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 48.9}

REP. CLANCY asked **Ms. Clark** what coal mines are located in Big Horn County? **Ms. Clark** went over the mines. **REP. CLANCY** asked, are those mines in trouble or flourishing at this time? **Ms. Clark** stated, the prediction is that the mines will show a decline in production. **REP. CLANCY** asked how many jobs will be affected? **Ms. Clark** stated, a little less than two years ago we lost 16 Morrison Knudson employees in Hardin. Those income levels were of the largest income levels in the city.

REP. HARRIS asked **Ms. Clark**, regarding the new language on page 8 of the bill, how would these monies be spent? **Ms. Clark** deferred the question to **Mr. Anderson** who said that is one of the two dedicated purposes that this bill deals with for coal tax

revenue. It deals with the impact of decline and it deals with the impact of expansion of coal development. Page 8 talks about the Coal Board giving financial capacity to local governments to work with the coal and energy companies that are currently in coal productions. It is a novel idea to have the local governments being the front line participants in this. **REP.**

HARRIS asked would this money be used to make coal more attractive to potential buyers and possibly expanding the markets for coal? **Mr. Anderson** stated that is possible. It is a beneficiation of the existing resource as a partner with the local governments. **REP. HARRIS** asked, do you have any examples of success in this field? **Mr. Anderson** stated the state of Montana doesn't participate in this. North Dakota has been doing this for a number of years.

REP. ERICKSON asked **Mr. Mockler** how he would see this working from the industry standpoint. **Mr. Mockler** gave an example.

REP. ERICKSON asked **REP. LINDEEN** who loses and how much? **REP. LINDEEN** handed out a tax distribution chart **EXHIBIT (nah37a03)** and explained it. **REP. ERICKSON** asked how much does the general fund lose? **REP. LINDEEN** stated about \$850,000 for the biennium.

REP. YOUNKIN asked **REP. LINDEEN** to go over exhibit A on page 2 of the final report. **REP. LINDEEN** deferred the question to **Mr. Anderson** who went over it.

REP. DALE asked **Mr. Anderson** to review some of the more wide ranging coal impact projects that have been funded out of that. **Mr. Anderson** stated over the course of the last 25 years the Coal Board has distributed up to \$75,000,000 to 250 projects. Those ranged from a major contributor to the building of the new high school in Colstrip to building sewer and water systems in Ashland and Hardin to building an airport in Broadus. The vast majority of the money has gone into schools.

REP. YOUNKIN asked **Mr. Anderson**, regarding page 8, lines 18 and 19 of the bill there is an appropriation for \$1,000,000 from the Coal Severance Tax, where does that fit in on the chart? **Mr. Anderson** stated that is the appropriation for the 3%.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 63.3}

REP. LINDEEN stated that the fact is that eastern Montana and in particular the coal counties in Montana have contributed a lot to the state. ***{Tape : 1; Side : B; Approx. Time Counter : 0.1}*** She

talked about the impacts of coal development. She asked for a do pass.

HEARING ON HB 334

Sponsor: REP. RALPH L. LENHART, HD 2, Glendive

Proponents: Don Stepler, Richland County Commissioners
Gloria Paladichuk, Richland Economic Development
Larry Watson, Gallatin County
Ron Alles, Lewis and Clark County
Jane Jelinski, MACo
William Duffield, Fallon County
Joan Stahl, Rosebud County
Geoff Feiss, Montana Telecom Association
Alec Hansen, Montana League of Cities and Towns

Opponents: Tom Daubert, Montana Solid Waste Contractors
Association

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 2.2}

REP. RALPH L. LENHART, HD 2, Glendive, stated HB 334 a simple bill. With this bill communities would be eligible for low interest loans at 4% to finance equipment that is used at landfills. He gave an example in Glendive. He passed out two letters of support **EXHIBIT(nah37a04)** and **EXHIBIT(nah37a05)**.

Proponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 6}

Gloria Paladichuk, Richland Economic Development, passed out letters in support of HB 334 **EXHIBIT(nah37a06)**, **EXHIBIT(nah37a07)**, **EXHIBIT(nah37a08)**, **EXHIBIT(nah37a09)**, **EXHIBIT(nah37a10)**, **EXHIBIT(nah37a11)**, **EXHIBIT(nah37a12)**, **EXHIBIT(nah37a13)** and **EXHIBIT(nah37a14)**. She stated while Richland County's costs are increasing the population and real estate values are decreasing. She urged a do pass. She stated that **SEN. MCNUTT**, **REP. STEINBEISSER** and **REP. KASTEN** would like to go on record as strongly supporting the bill.

Jane Jelinski, MACo, stated that the business of landfills is a never ending cost to counties whether they are closed or open. She asked for a do pass.

Ron Alles, Lewis and Clark County, stated that this bill is an opportunity to offer tax relief in the form of rate reductions. He went over the situation in Lewis and Clark County. Having this program available to composting operations is important because it will give companies a better chance to remain an ongoing concern. By saving composting operations money it allows us to not put as much garbage into our landfills.

Alec Hansen, Montana League of Cities and Towns, stated HB 334 provides an opportunity to offer better rates across the state. He asked for a do pass.

Don Steppler, Richland County Commissioners, stated HB 334 would be a definite benefit for Richland County. He asked for a do pass.

Larry Watson, Gallatin County, submitted written testimony **EXHIBIT**(nah37a15).

Opponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 18.1}

Tom Daubert, Montana Solid Waste Contractors, stated that he does not oppose the idea of saving people money. This bill will further skew the competition that occurs between local governments and the private sector. He went over the differences between government operations and private operations. This bill would allow the use of taxpayer dollars that are intended to be for water pollution problems for uses that would very remotely pertain to water pollution. The language being struck allows small communities access to the revolving fund for water pollution problems. This bill will open the door to the use of revolving fund to any community. It is not a good idea to have the private sector to be looking to the state as a bank. When there is competition it is important that the playing field be level.

Informational Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 22.7}

Anna Miller, DNRC, stated that she is the financial advisor for the state revolving fund that is currently available to local governments private citizens.

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 23.3}

REP. ERICKSON asked **Ms. Miller** if these loans are going to break the bank. **Ms. Miller** stated she does not believe so. She handed out a map **EXHIBIT**(nah37a16).

REP. HARRIS asked **Ms. Miller** what is the reason that the language struck on page 2 was inserted. **Ms. Miller** stated that she is not sure. No one has applied for a loan under those conditions.

REP. HARRIS asked, then no one met the criteria for the eligible solid waste projects, correct? **Ms. Miller** stated she is not sure. **REP. HARRIS** asked if this is relatively low on the water pollution criteria. He asked if DNRC has a list of eligibility and where does a solid waste management system rank in that list?

Ms. Miller stated, each year DEQ assesses the needs for water pollution control projects. There are about 100 projects that get listed each year. Those at the top rank higher in receiving funds. There is about \$15,000,000 available per year to do projects. The landfills may rank towards the bottom of the list.

REP. HARRIS asked, where does a solid waste compactor fit in the priority? Is that really a pollution control device? **Ms. Miller** stated that she is not sure because none have been funded.

REP. LAIBLE asked **Ms. Miller** how would the ranking be in the difference between the public and private sector? **Ms. Miller** deferred the question to **Tom Livers, DEQ**, who stated it would depend on the project but the primary driver is water pollution impact.

REP. HURDLE asked **Ms. Paladichuk**, to talk about the groundwater problems with regard to the landfills. **Mr. Paladichuk** deferred the question to **Mr. Stepler** who gave an example.

REP. HARRIS asked **Mr. Livers** is it true that the money from the loans is not available to the private sector? **Mr. Livers** stated both public and private entities are eligible for loans under this program. **REP. HARRIS** asked is it the case that there is a preference for government loan applicants as opposed to private applicants? **Ms. Miller** stated she does not believe so. She talked about irrigation loans.

REP. BALES asked **Ms. Miller** why are there different percentage rates? **Ms. Miller** stated DNRC has been able to cash flow the program quarterly on the money that is received. Those loans that have rates less than 4% have demonstrated some type of hardship.

REP. BALES asked **Mr. Steppler** how much waste do landfills handle? **Mr. Steppler** stated he is not sure. The estimates are at two tons per household, per year. That would be more for farmers and ranchers and businesses.

REP. MOOD asked **Ms. Miller** are there any loans that have been given to private entities? **Ms. Miller** stated yes and referred to Exhibit 16.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 39.3}

REP. LENHART stated that this bill will not create any unfairness between the public and private sectors. It is needed all across Montana. He asked for a do pass.

HEARING ON HB 457

Sponsor: **REP. DICK HAINES, HD 63, Missoula**

Proponents: **Bruce Simon, Billings, self**
Bobbi Rossignol, Lolo, self
Dick Rossignol, Lolo, self
Steve White, Bozeman, self

Opponents: **Bruce Bender, City of Missoula**
Byron Roberts, Montana Building Industry Association
Alec Hansen, Montana League of Cities and Towns

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 40.6}

REP. DICK HAINES, HD 63, Missoula, gave a background of the bill. The bill comes close to being a constitutional issue, taxation without representation. He handed out a fiscal note **EXHIBIT**(nah37a17).

Proponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 44.9}

Bruce Simon, Billings, self, went over the changes in the statute. He stated that cities should not make decisions for residents of that county. This very confusing and poorly drafted statute grants to the cities the ability to extend their

jurisdiction up to 4.5 miles outside the city limits. He gave in several examples of why this statute doesn't work.

Bobbi Rossignol, Lolo, self, submitted written testimony **EXHIBIT(nah37a18)** and went over it.

Dick Rossignol, Lolo, self, submitted written testimony **EXHIBIT(18)** and a case summary **EXHIBIT(nah37a19)** and went over it.

Steve White, Bozeman, self, submitted written testimony **EXHIBIT(nah37a20)**. He also submitted written testimony from Ray and Shirly White **EXHIBIT(nah37a21)**. **{Tape : 2; Side : A; Approx. Time Counter : 0.1}**

Opponents' Testimony:

{Tape : 2; Side : A; Approx. Time Counter : 2.4}

Bruce Bender, City of Missoula, gave some examples, in Missoula, of why the bill should not pass. If you remove the city inspections you are removing life safety codes. This is a life safety issue and an insurance rating issue.

Byron Roberts, Montana Building Industry Association, stated that cities are not growing as fast as counties are currently. Extra territorial authority relating to planning, zoning and the enforcement of building codes has been done for the past 30 years. He urged a do not pass.

Alec Hansen, Montana League of Cities and Towns, stated that building codes that are enforced by the cities in extended jurisdiction areas are life saving codes. The Senate came up with a very reasonable solution to this issue in SB 242. Under this amendment the county could enforce building codes in the donut area under selected areas. The jurisdiction for building codes in the donut area would be up to the county commission. He explained an amendment to the bill. He asked the committee to either amend the bill, wait for SB 242 or kill the bill. This issue should be put to rest.

Informational Testimony:

{Tape : 2; Side : A; Approx. Time Counter : 13.2}

Eric Fehlig, Department of Commerce, outlined the extent of what is in the jurisdictions. He stated that he is available for any questions.

Questions from Committee Members and Responses:***{Tape : 2; Side : A; Approx. Time Counter : 15}***

REP. LASZLOFFY asked **Mr. Simon** are the cities enforcing the same building codes as the state? **Mr. Simon** stated yes in a broad sense. He gave an example and went over state permits. **REP. LASZLOFFY** asked **Mr. Simon** what his position on SB 242 and the proposed amendments is. **Mr. Simon** stated that the amendment for SB 242 just turns the bill into a circle and it creates more problems.

REP. LASZLOFFY asked **Mr. Bender** what are the fees for the permits and inspections based on? **Mr. Bender** stated the fees are regulated by the state. **REP. LASZLOFFY** asked specifically what are they based on? **Mr. Bender** stated some of the basic ones are a lump sum fee and others, such as structures, are a percentage of the value. **REP. LASZLOFFY** asked is siding or the installation of siding really considered a life safety issue? **Mr. Bender** stated it is a structural issue. You can do something wrong with siding as it does affect the structure.

REP. ERICKSON asked **REP. HAINES** is there a way in the bill that can allow people to stay within the donut and stay within the need for some inspections. **REP. HAINES** gave an example. He stated that safety is not delivered by inspection. The builder wants to build the house right because he wants to sell more houses.

REP. BROWN asked **Mr. Bender** is there about \$40,000,000 of taxable value in the donut area around Missoula? **Mr. Bender** stated yes in construction value. **REP. BROWN** asked what percent of that \$40,000,000 would be fees for inspections? **Mr. Bender** stated he does not know. **REP. BROWN** asked is it a sizable sum? **Mr. Bender** stated it is probably a few hundred thousand dollars. **REP. BROWN** asked are insurance ratings based on building codes in Missoula county? **Mr. Bender** stated that is a nationwide aspect. In an overall rating a general insurance will give you a rating based upon the quality of inspections.

REP. HARRIS asked **Mr. Simon** are the two obstacles that would prevent a constitutional challenge of this that the donut inspection situation has been approved by the legislature and the cities don't have this authority except with the consent of the counties? **Mr. Simon** stated he does not think so. The Rossignol's are challenging the constitutionality of this statute. This is all about the citizen's rights and has nothing

to do with building codes. **REP. HARRIS** asked is the only court challenge the one by the Rossignol's. **Mr. Simon** stated to his knowledge yes. **REP. HARRIS** asked is there a court decision in this? **Mr. Simon** stated not to his knowledge.

REP. STORY asked **REP. HAINES** is this exactly the same bill as last session? **REP. HAINES** stated he is not sure. **REP. STORY** deferred the question to **Mr. Simon** who stated that he is not sure if it is precisely the same bill but it is the same concept.

Closing by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 36.2}

REP. HAINES stated nobody should have to go through what the Rossignol's are going through. There is a lot of concern about codes but the codes are not the issue. He asked that the committee look at both bills concerning this issue and take the best of the two to make the bill.

HEARING ON HB 532

Sponsor: **REP. CHRISTINE KAUFMANN, HD 53, Helena**

Proponents: **Tim Davis, Montana Smart Growth Coalition**
Judy Smith, Homeward
Marga Lincoln, AERO

Opponents: **Peggy Trenk, Montana Association of Realtors**
Byron Roberts, Montana Building Industry Association

Opening Statement by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 38.5}

REP. CHRISTINE KAUFMANN, HD 53, Helena, submitted written testimony **EXHIBIT**(nah37a22).

Proponents' Testimony:

{Tape : 2; Side : A; Approx. Time Counter : 47.8}

Tim Davis, Montana Smart Growth Coalition, stated the lack of affordable housing and the development that has been taking place in unsafe areas are issues that affect the entire state. He talked about the wildfires of 2000. He urged a do pass.

Judy Smith, Homeward, submitted written testimony from Briana Kerstein of Montana People's Action **EXHIBIT (nah37a23)**. She went over housing problems in Montana. She stated that some people pay 100% of their income to housing. The needs of these families have to be addressed. She gave some examples from different counties around the state. Growth policies have to look at the specific patterns in the communities. Affordability is a question in all communities but it can take different patterns. She urged the committee's support.

Marga Lincoln, AERO, talked about her experience with this issue. This is just common sense. Another issue is where counties locate affordable housing.

Opponents' Testimony:

{Tape : 2; Side : A; Approx. Time Counter : 59}

Peggy Trenk, Montana Association of Realtors, stated that her concern is that it will cost a lot of money to develop these growth policies. The amendments being discussed may address her concerns. The language on page 2, line 2, needs some definition. She talked about what her association is doing to teach it's members how to get involved with growth policies.

Byron Roberts, Montana Building Industry Association, stated that he is reluctantly opposed to this bill because the intentions are good. Adding these general items is not wise. If this precedent is set it would be tying everybody's agenda to what should be considered in local growth policies. He stated that he would like to see the bill amended or killed and he would be available to work with the sponsor.

Informational Testimony:

{Tape : 2; Side : B; Approx. Time Counter : 0.1}

Linda Stoll, Montana Association of Planners, asked the committee to take a close look at the bill. There is a little bit of confusion about the terms in the bill. She went over the confusing language. MAP is not opposed to the bill but does believe that there are some questions that have to be addressed before the bill becomes law.

Jane Jelinski, Montana Association of Counties, stated that she would be glad to work with the sponsor on amendments to clear up the confusing language in the bill.

Questions from Committee Members and Responses:

{Tape : 2; Side : B; Approx. Time Counter : 3.6}

REP. HURDLE asked **Mr. Davis** is there anyway when making a growth plan that it might be possible to do some type of basic assessment of the value of the existing units that are available?

Mr. Davis stated that can be done using information that is available. **REP. HURDLE** asked how do you get the number of owner occupied houses as opposed to rental houses in certain areas?

Mr. Davis redirected the question to **Ms. Smith** who stated that information is available through the state consolidated plan.

REP. HURDLE stated since 1970 families have gotten smaller but houses have gotten larger and more expensive. She asked, are you being a little optimistic thinking that the objective of this is to meet the needs of the families? **Ms. Smith** gave an example. Different families have different needs.

REP. BROWN asked **Ms. Smith** how is it possible that someone would be paying 100% of their income for housing costs? **Ms. Smith** stated that people get a check and their housing costs are paid by that check. They get food from the food bank and they get clothing from different avenues. All of the reported income that they have goes to their housing and they find ways to meet their other needs. **REP. BROWN** asked how many families are like that in Missoula? **Ms. Smith** stated that there are at least 100 families. Most families on welfare are in that situation.

REP. MOOD asked **Ms. Smith** what do you mean when you use the word "stock"? **Ms. Smith** stated stock is something that is built.

REP. MOOD asked is the building going on in Missoula moving into other counties? **Ms. Smith** stated yes because it is less expensive to build in other counties. **REP. MOOD** asked why is it less expensive to build there? **Ms. Smith** stated the land isn't as expensive. **REP. MOOD** asked does it have anything to do with regulation? **Ms. Smith** stated that is not her experience. **REP. MOOD** stated the information in line 20 - 28 of the bill is personal information. **Ms. Smith** stated there would never be any confidentiality issues with the language.

REP. BITNEY asked **Ms. Smith** how do the college students factor into the thousands of people looking for housing in Missoula?

Ms. Smith stated there is an overflow of college students into lower income areas. There are people on waiting lists for housing in Missoula. **REP. BITNEY** stated that he believes there would be a minimum of 100 low income apartments available at any given time in Missoula. He asked **Ms. Smith** to address that. **Ms.**

Smith stated that a survey in Missoula reported 0% vacancy rate for these low income families. In Missoula right now affordable housing is \$100,000 - \$200,000 these people couldn't afford that.

REP. BITNEY stated that he is surprised by that with HUD, Habitat for Humanity, Section 8, etc. **Ms. Smith** stated that perhaps it is different in his district.

REP. ERICKSON asked **REP. KAUFMANN**, regarding page 2 of the bill, what does "including environmentally sensitive resources" mean?

REP. KAUFMANN stated, page 2, line 3, gives the definition of these resources. **REP. ERICKSON** stated that the best line is the third line and "including environmentally sensitive resources" can be crossed out. That would make this a simple bill, don't you think? **REP. KAUFMANN** stated that the first section sets up the analysis of your current situation. We might be able to make the sentences more parallel. We want an analysis and then planning for the future.

REP. BALES stated he would rather see an effort to upscale things rather than voice the emphasis on the poor. He asked **REP.**

KAUFMANN to address that concern. **REP. KAUFMANN** stated that we need to accept that there are people in our communities who will never be able to afford upscale housing. This bill does not propose dilapidated housing. It says that the needs of the citizens need to be analyzed. **REP. BALES** asked if we are going to totally define all of these about housing should we totally define everything about land uses? **REP. KAUFMANN** stated that she would like to work on an amendment to not have this so detailed in that area. Some guidance does need to be given to allow the counties to make their growth plans as flexible and specific as they need to.

REP. HARRIS asked **REP. KAUFMANN** should there be any consideration to the counties which have declining population? **REP. KAUFMANN** stated that she is not sure it's accurate to conclude that a community that is not growing doesn't want to have a plan. If that community is interested in economic development then they want to plan for it.

REP. CURTISS asked **REP. KAUFMANN**, regarding the letter from Montana People's Action, what is the relationship between HB 273 and HB 57? **REP. KAUFMANN** stated that is an error in the letter. She deferred the question to **Mr. Davis** who stated this bill does not have any money attached to it in any way.

Closing by Sponsor:

{Tape : 2; Side : B; Approx. Time Counter : 24.9}

REP. KAUFMANN stated, everyone agrees that these elements are important to include in a growth policy. We must plan for economic growth. She urged a do pass.

EXECUTIVE ACTION ON HB 420

{Tape : 2; Side : B; Approx. Time Counter : 28.5}

Motion: REP. HURDLE moved that HB 420 DO PASS.

Discussion:

Mr. Mitchell passed out two amendments **EXHIBIT**(nah37a24) and **EXHIBIT**(nah37a25).

Motion: REP. STORY moved that **AMENDMENT HB042001.alm** BE ADOPTED.

Discussion:

REP. STORY explained the amendment.

Vote: Motion that **AMENDMENT HB042001.alm** BE ADOPTED carried unanimously.

Motion: REP. DALE moved that HB 420 DO PASS AS AMENDED.

Motion: REP. LASZLOFFY moved that **AMENDMENT HB042001.akl** BE ADOPTED.

Discussion:

Mr. Mitchell explained the amendment.

Vote: Motion that **AMENDMENT HB04201.akl** BE ADOPTED carried unanimously.

Motion: REP. DALE moved that HB 420 DO PASS AS AMENDED(2).

Discussion:

REP. ERICKSON stated that he likes the bill and gave an example of why it is needed.

REP. CLANCY stated that the intent of the bill is good in taking into consideration rights of the property owner however there were 7 opponents who claimed the bill is not industry friendly. She stated that she will vote against the bill.

REP. MOOD gave an example of why he does not like the bill.

REP. BALES gave an example of why he is concerned with the bill. The bills passed on eminent domain already are improvements but it is questionable whether this bill is an improvement.

REP. HURDLE stated this is a wonderful private property rights bill. This bill was studied extensively in the interim. She urged a do pass.

REP. HARRIS stated this is an extremely modest bill. It requires that the property owner be provided with basic rights about eminent domain.

Vote: Motion that **HB 420 DO PASS AS AMENDED(2)** carried 11-9 with Bales, Bitney, Clancy, Curtiss, Dale, Holden, Laible, Mood, and Younkin voting no.

EXECUTIVE ACTION ON HB 332

{Tape : 2; Side : B; Approx. Time Counter : 44.1}

Motion/Vote: **REP. DALE** moved that **HB 332 DO PASS**. Motion carried unanimously.

EXECUTIVE ACTION ON HB 460

{Tape : 2; Side : B; Approx. Time Counter : 45.5}

Motion: **REP. DALE** moved that **HB 460 DO PASS**.

Discussion:

REP. MOOD asked **REP. ERICKSON** if he was suggesting that the radon risk is level when he asked the question about lineal graph lines. **REP. ERICKSON** gave an example. He stated that Montana should not take the risk and move the standard to 8 instead of 4.

Motion/Vote: **REP. CLANCY** moved that **HB 460 BE TABLED**. Motion carried 16-4 with Brown, Holden, Story, and Younkin voting no.

EXECUTIVE ACTION ON HB 310

{Tape : 2; Side : B; Approx. Time Counter : 50.4}

Motion: **REP. ERICKSON** moved that **HB 310 DO PASS**.

Discussion:

REP. LASZLOFFY stated that he has researched this bill extensively. The concern of the Northern Plains Resource Council is the volume of discharge of water from coal bed methane. This bill doesn't control the volume. He stated that he is going to vote against the bill.

REP. HURDLE asked **REP. LASZLOFFY** if he talked to those people about salinity. **REP. LASZLOFFY** stated yes and you still cannot degrade the waters. **REP. HURDLE** stated it appears that they are not considering salinity to be hazardous. **REP. LASZLOFFY** stated that is not his understanding. That is one reason that the wells are being permitted right now.

Mr. Mitchell explained the salinity matter.

REP. HURDLE asked **Mr. Mitchell** is it possible that someone could look at this and say there is not too much salinity and therefore a permit is not required? **Mr. Mitchell** stated that is possible and it would depend on if the salinity that is discharged would increase it above and beyond the standard. **REP. HURDLE** stated it is the responsibility of the Natural Resources Committee to make sure that these kinds of things don't happen. Plants can't live with salinity and these wells are putting tons of salt in the water. She stated that this bill does need to be passed.

REP. LASZLOFFY stated that you are not allowed to degrade the waters, that is federal law. With respect to the salts, you are allowed to discharge into a river but there is a given mixing zone that the EPA will allow. The statutes are really clear on this issue. These wells are being monitored and as soon as the receiving water of body reaches the carrying capacity no more wells can be permitted in that area. **REP. HURDLE** asked how would they know? **REP. LASZLOFFY** stated they are being monitored.

REP. BALES stated that there are two separate issues here. First is what the law says, you cannot discharge any water that is of poorer quality than what the receiving water body is without a permit. Each stream has certain levels that you can go up to. He gave an example in the Powder River Basin. This bill singles out an industry even though the laws are clear and in place. He stated the intent of the bill is wrong and he will vote against it.

REP. LASZLOFFY stated that he is concerned with the coal bed methane industry pumping all of the water out of the ground. This bill doesn't address that concern. This bill addresses water pollution problems which are already addressed in current law.

REP. ERICKSON stated that he is for the bill. The difficulty with coal water discharge testing is that the water may be clear at first but when you start pumping large volumes of water the salinity is greater. He stated that he is concerned with the residents outside of the Powder River Basin. **{Tape : 3; Side : A; Approx. Time Counter : 0.1}**

REP. BALES disagreed with **REP. ERICKSON**. The department has to continually monitor water discharges.

REP. DALE stated that he objects to the bill because it singles out an industry and that is bad policy. He also perceives it as another attempt to circumvent a legal environmental impact statement process which is ongoing. This bill is based on a fear that the EIS may come out with a decision that will let development proceed. Water monitoring does go on and it is aggressive.

REP. YOUNKIN asked **REP. MOOD** if **Ms. Sensibaugh** provided him with anything comparing salinity levels. **REP. MOOD** stated no.

REP. MOOD stated there are laws in place that we ask people to comply with and these companies are complying with those laws. It is wrong to change the law in the middle of the process.

REP. GUTSCHE stated this bill is talking about a permit. If we don't have that permit there is no way to protect these ranchers and farmers.

Vote: Motion that **HB 310 DO PASS** failed 9-11 with **Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, Wanzenried, and Younkin** voting aye.

Motion/Vote: **REP. DALE** moved that **HB 310 BE TABLED**. Motion carried 11-9 with **Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, Wanzenried, and Younkin** voting no.

EXECUTIVE ACTION ON HB 334

{Tape : 3; Side : A; Approx. Time Counter : 7.3}

Motion: **REP. ERICKSON** moved that **HB 334 DO PASS**.

Discussion:

REP. HARRIS stated that this is a fairly harmless bill that will do some good.

Mr. Mitchell explained how this bill meshes with HB 159.

REP. HARRIS asked so if we pass this it would be consistent with HB 159 because it would subsume it? **Mr. Mitchell** stated yes.

REP. MOOD stated he carried the bill that created the Water Pollution Control State Revolving Fund. The reason this language was put into the bill is because there was some concern on the part of the private solid waste management companies that they were going to have to compete with government entities. This is just one little step along the direction of phasing out the private companies.

REP. ERICKSON stated it is the nature of the project that counts and solid waste disposal areas can hurt water. Private entities and government entities will be treated equally and there is no evidence to state otherwise.

REP. HARRIS stated that he shares the concern about any kind of discriminatory impacts on private industries.

REP. MOOD stated that the loan programs within the government work well when they go to government entities but not when they go to private entities.

REP. STORY stated state and local agencies are at the top of the list and if there is any money left over a private entity might get it. The advantage that government agencies have is that they have unlimited collateral and the state is going to make the loan to the person with the best collateral.

REP. DALE stated that in these loan programs a private entity has to come up with 150% of the value of the project as collateral.

REP. BALES stated there is a problem in eastern Montana where there aren't many private entities who want to take over garbage disposals. There is a need for this in that area and that is why he will support the bill.

REP. LASZLOFFY asked **REP. DALE** why do the private entities need the loan money if they have to come up with 150% collateral?

REP. DALE stated that is the point. It eliminates anyone who doesn't have capitol from even trying to get one of these projects under way. If these entities can qualify then they probably don't need the loan.

Vote: Motion that HB 334 DO PASS failed 10-10 with Bales, Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, Wanzenried, and Younkin voting aye.

Motion/Vote: REP. DALE moved that HB 334 BE TABLED. Motion failed 10-10 with Bitney, Brown, Clancy, Curtiss, Dale, Holden, Laible, Laszloffy, Mood, and Story voting aye.

Motion/Vote: REP. GUTSCHE moved that HB 334 DO PASS. Motion carried 11-9 with Bitney, Brown, Clancy, Curtiss, Dale, Laible, Laszloffy, Mood, and Story voting no.

EXECUTIVE ACTION ON HB 343

{Tape : 3; Side : A; Approx. Time Counter : 25.4}

Motion: REP. WANZENRIED moved that HB 343 DO PASS.

Discussion:

REP. WANZENRIED stated the groups that disagree on this bill cannot reach a consensus.

Substitute Motion/Vote: REP. WANZENRIED made a substitute motion that HB 343 BE TABLED. Substitute motion carried 15-5 with Erickson, Gutsche, Hurdle, Wanzenried, and Younkin voting no.

EXECUTIVE ACTION ON HB 485

{Tape : 3; Side : A; Approx. Time Counter : 28.5}

Motion: REP. DALE moved that HB 485 DO PASS.

Discussion:

REP. ERICKSON stated that he cannot support the bill as it costs \$850,000 and they are asking for what local impact ought to have done.

REP. DALE stated these communities are suffering the impacts from a punitive severance tax, the lengthy permitting process and all of the things that have curtailed the industry in the eastern part of Montana. Now they are asking for a little bit of the money back that they paid in taxes. When you talk about fair this is ultimately fair.

REP. HARRIS asked REP. DALE if he would be supportive of an amendment to strike lines 15 - 16 on page 8 and substitute line

13 with 100%. **REP. DALE** stated that would be a favorable amendment although it removes one of the sources that would possibly increase the potential for employment. **REP. HARRIS** stated that he is wondering if this is just some long winded research project that isn't going to go anywhere that the coal industry should be funding itself. **REP. DALE** stated industry usually doesn't fund long winded research projects, they are more in line to be practical. The process to desulfurize, demoiseure and market coal is in place right now. **REP. HARRIS** stated that he is sure the research is valuable, but it is only valuable when the companies are doing it with their own money.

Motion: **REP. HARRIS** moved that an **AMENDMENT TO STRIKE LINES 15 - 16 ON PAGE 8 AND SUBSTITUTE 100% FOR 50% IN LINE 13 ON PAGE 8 BE ADOPTED.**

Discussion:

REP. CURTISS asked **Mr. Mitchell** are the operational expenses of the Coal Board totally separate from this? **Mr. Mitchell** stated the Coal Board is funded from a separate obligation.

Vote: Motion that **AMENDMENT BE ADOPTED** carried 19-1 with Erickson voting no.

Motion: **REP. DALE** moved that **HB 485 DO PASS AS AMENDED.**

Discussion:

REP. GUTSCHE asked **REP. HARRIS** what does the 100% go to? **REP. HARRIS** stated the economic development projects in theses communities.

REP. STORY stated in 1997 there was a bill passed that allowed the use of this coal money on the downside of the development.

Vote: Motion that **HB 485 DO PASS AS AMENDED** carried 12-8 with Cyr, Eggers, Erickson, Gutsche, Hurdle, Tramelli, Wanzenried, and Younkin voting no.

ADJOURNMENT

Adjournment: 7:35 P.M.

REP. CINDY YOUNKIN, Chairman

HOLLY JORDAN, Secretary

CY/HJ

EXHIBIT (nah37aad)